THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION NO.20753 OF 2002

Dated 22nd September, 2005.

Between:

1. M. Annappa Sastry and another …Petitioners

And

1. The Govt. of A.P., rep. by its Special Secretary to Energy, Hyderabad.
2. The Chairman and Managing Director, A.P.C.P.D.C.L., Vidyuth Soudha, Hyderabad.
3. Assistant Engineer, Electricity Operation, A.P.C.P.D.C.L, Nacharam, Hyderabad-500 076.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION NO.20753 OF 2002

ORDER :

This writ petition is filed seeking a declaration that the proceedings of the third respondent – Assistant Engineer (Electricity Operation), A.P.C.P.D.C.L, Nacharam, Hyderabad dated 8-10-2002 in refusing to provide power supply to the premises bearing No.7-6, Ravindranagar, Nacharam, Hyderabad as arbitrary and illegal.

The 1st petitioner claims to be the owner of the premises bearing No.7-6, Ravindranagar, Nacharam, Hyderabad. It appears that the 1st petitioner has earlier let out the said premises for commercial and business purposes to one Mr. B. Venkata Reddy, who was carrying on the business in the name and style of M/s. B.V.R. Industries for which purpose he obtained power supply from the 2nd respondent Corporation. However, in July, 2001 the said B. Venkata Reddy vacated the premises. The 1st petitioner states that he was not aware of the said fact till August, 2001 and when he took possession of the premises, it was observed that the premises in question was provided electricity supply under S.C.No.705-5756. Immediately, the 1st petitioner made a representation to the third respondent by letter dated 28-8-2001 to disconnect the supply and accordingly the supply to the premises in question was disconnected. The premises remained vacant for sometime and subsequently in the last week of September, 2002, the 1st petitioner intended to let out the premises to the 2nd petitioner Mr. Malka Rama Rao and accordingly entered into a lease agreement dated 4-10-2002 with him. On the basis of the said lease agreement, the 2nd petitioner Sri M. Rama Rao approached the respondents requesting for fresh power supply connection. In pursuance thereof, the respondents have inspected the premises and on the basis of the report submitted by the concerned Line Inspector, it was observed that there was already an existing disconnected service bearing No.705-5756 of M/s. Venkateswara Engineering in respect of which nearly Rs.1,30,000/- is due towards consumption charges. On the basis of the said report of the Line Inspector, the third respondent passed the order dated 8-10-2002 refusing to grant fresh service connection as sought by the 2nd petitioner-tenant. Aggrieved by the said action, this writ petition is filed contending that the action of the respondents in refusing to provide power supply to the premises in question on the ground that earlier consumer has not cleared the bills is arbitrary and illegal.

In the counter-affidavit filed on behalf of the respondents, the plea of the first petitioner that he was not aware of the service connection obtained by the former tenant M/s. Venkateswara Engineering has been denied and it is stated that as a matter of fact the first petitioner was very much aware of the dues outstanding and he gave his no objection for providing service connection to the previous tenant M/s. Venkateswara Engineering. It is also alleged that the previous tenant M/s. Venkateswara Engineering in collusion with the first petitioner has deliberately evaded payment of the arrears and therefore the respondents have rightly refused to grant fresh service connection as sought by the 2nd petitioner.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioners Sri C.V. Nagarjuna Reddy vehemently contended that since there is no privity of contract between the petitioners and the respondent Corporation, the impugned action of the third respondent is arbitrary and illegal.

On the other hand, the contention of the learned Counsel for the respondents is that the first petitioner being owner of the premises is bound by the agreement entered into between the previous tenant and the Corporation, and therefore the respondents cannot be found fault with in refusing to provide fresh service connection on the ground of non-payment of the arrears standing in the name of the previous tenant.

It is to be noted that admittedly the service connection stood in the name of the previous tenant. May be that, the first petitioner is the owner of the premises in question, but admittedly he was not a party to the agreement between the respondent Corporation and the previous tenant in whose name the service connection was obtained. So far as the second petitioner herein is concerned, he is the only tenant who intends to occupy the premises in question and who sought for providing fresh service connection. In the circumstances, the question is whether it is

open to the respondents to refuse to provide fresh service connection as sought by the 2nd petitioner merely on the ground that the past arrears are not cleared.

It is relevant to note that an identical question has been considered by the Apex Court in ISHA MARBLES v. BIHAR STATE ELECTRICITY BOARD, in which it has been held as under :

> *"Where that premises comes to be owned or occupied by the auction-purchaser, when such purchaser seeks supply of energy he cannot be called upon to clear the past arrears as a condition precedent to supply. There is no charge over the property. What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party. Of course, the bona fides of the sale may not be relevant. The form of requisition relating to the contract in Annexure VIII prescribed under clause VI of the Schedule to the Electricity Act. They cannot make the auction-purchaser liable. It is true that it was the same premises to which reconnection is to be given. Otherwise, with the change of every ownership new connections have to be issued does not appear to be the correct line of approach as such a situation is brought about by the inaction of the Electricity Board in or not recovering the arrears as and when they fall due or not providing itself by adequate deposits. In the present cases what the Corporation sought to recover under Section 29 were the loans advanced by enforcement of a mortgage. Such sale cannot affect the right of the Board to recover its dues. The failure of the Board to recover the dues as and when such dues arose, is a point to be put against it."*

Though in the said case, the appellant therein was an auction-purchaser from the State Finance Corporation who was refused service connection on the ground of non-clearance of the dues by the erstwhile owner, it is to be noted that the ratio laid down by the Supreme Court, in principle applies to the case on hand. In the case on hand, admittedly there is no privity of contract between the 1st petitioner and the respondent Corporation. In the circumstances, the mere fact that the first petitioner is the owner of the premises is immaterial and on that ground the Corporation cannot seek enforcement of contractual liability against the petitioners 1 and 2 who are third parties. It is always open to the respondents Corporation to work out the appropriate remedy for recovery of the alleged arrears from the previous tenant, but that cannot be made a ground to refuse fresh service connection as sought by the second

petitioner.

Accordingly, the Writ Petition is disposed of granting liberty to the petitioners to make an appropriate application seeking a fresh electricity service connection to the premises in question, in which event the same shall be considered by the respondents in accordance with law without insisting on payment of the arrears alleged to be due from the previous tenant M/s. Venkateswara Engineering.

The Writ Petition is accordingly disposed of. No costs.

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22nd September, 2005.

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